

Message Text

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ACTION SCS-03

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R 151436Z DEC 76
FM AMEMBASSY PRETORIA
TO SECSTATE WASHDC 6428
INFO AMCONSUL JOHANNESBURG
AMCONSUL DURBAN
AMEMBASSY OTTAWA
AMCONSUL CAPE TOWN

LIMITED OFFICIAL USE PRETORIA 5746

E.O. 11652: N/A
TAGS: PINS, CASC, PFOR, SF, US
SUBJ: REPORTED REFUSAL OF SAG TO GRANT U.S. CITIZEN ACCESS
TO CONSULAR OFFICER

REF: STATE 167636

1. SAG HAS PROVIDED EMBASSY WITH VERSION OF EVENTS SURROUNDING CANADIAN FILM CREW IN JUNE WHICH DIFFERS SUBSTANTIALLY FROM REFTTEL REPORT. ESSENCE OF SAG NOTE IS THAT TEAM LEFT CANADA BEFORE PERMISSION WAS GRANTED TO CARRY OUT THEIR WORK. SAG CLAIMS THEY ENTERED THE COUNTRY AS REGULAR TOURISTS AND WERE TOLD BY THE DEPT OF INFORMATION THAT THEY MUST OBTAIN WORK PERMITS FROM THE DEPT OF INTERIOR. DEPT OF INFORMATION ALLEGEDLY ASSISTED CREW "SUBJECT TO THEIR OBTAINING THE NECESSARY PERMITS AND PERMISSION FROM THE DEPT OF INTERIOR". ACCORDING TO SAG, CREW FAILED TO NOTIFY INTERIOR OF CHANGE OF TOURIST STATUS AND INTERIOR "HAD NO ALTERNATIVE BUT TO WITHDRAW THEIR TEMPORARY RESIDENCE PERMITS AND TO TAKE THE NECESSARY STEPS TO ENSURE THAT THEY LEAVE THE COUNTRY. THEY WERE THEREFORE DETAINED AND WERE GIVEN THE OPTION TO LEAVE SOUTH AFRICA OR BE PROSECUTED."

2. COMPLETE TEXT OF SAG NOTE PERTAINING TO CONSULAR ACCESS READS AS FOLLOWS: "DURING THEIR PERIOD OF CUSTODY (FROM 03H00 TO 15H15 ON 10 JUNE) NONE OF THE GENTLEMEN
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REQUESTED THAT A LAWYER OR CONSULAR REPRESENTATIVE BE INFORMED.

IT MIGHT BE POINTED OUT THAT THERE IS NO LEGAL OBLIGATION ON THE SOUTH AFRICAN AUTHORITIES TO NOTIFY FOREIGN DIPLOMATIC AND CONSULAR REPRESENTATIVES OF THE DETENTION OF ALIENS FOR INFRINGEMENTS OF THE LAWS RELATING TO ENTRY INTO AND DEPARTURE FROM THE REPUBLIC."

3. ALTHOUGH THERE IS NO CONSULAR TREATY WITH SAG, EMBASSY QUERIES SAG ASSERTION THAT THERE IS NO OBLIGATION TO CONTACT FOREIGN DIPLOMATIC OR CONSULAR REPRESENTATIVES. PREVIOUS SAG NOTE IN MARCH 1974 CONSULAR CASE STATED THE FOLLOWING: "THE DEPARTMENT OF FOREIGN AFFAIRS WOULD LIKE TO DRAW THE EMBASSY'S ATTENTION TO THE FACT THAT IT IS THE POLICY OF THE SOUTH AFRICAN AUTHORITIES TO AFFORD EVERY FACILITY TO PERSONS IN CUSTODY TO COMMUNICATE WITH THEIR CONSULAR OR OTHER REPRESENTATIVES AND THAT THE RELEVANT AUTHORITIES HAVE STANDING INSTRUCTIONS TO THIS EFFECT." IN VIEW OF CONFLICT OVER ISSUE OF CONSULAR ACCESS IN ABOVE TWO NOTES, EMBASSY WOULD LIKE TO APPROACH SAG FOR CLARIFICATION. BEFORE DOING SO, EMBASSY WOULD LIKE TO HAVE DEPT'S ASSESSMENT REGARDING SAG OBLIGATIONS UNDER INTERNATIONAL LAW TO INFORM US OFFICIALS WHEN CITIZENS ARE PICKED UP BY POLICE AS WELL AS SPECIFIC GROUNDS ON WHICH APPROACH SHOULD BE MADE TO OBTAIN THIS CLARIFICATION.
BOWDLER

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